

**EXHIBIT 5**

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

\* \* \* \* \*

**2200. COMMUNICATIONS AND DISCLOSURES**

**2210. Communications with the Public**

(a) through (c) No Change.

**(d) Content Standards**

**(1) General Standards**

(A) through (E) No Change.

(F) Communications may not predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast; provided, however, that this paragraph (d)(1)(F) does not prohibit:

(i) A hypothetical illustration of mathematical principles, provided that it does not predict or project the performance of an investment or investment strategy;

(ii) An investment analysis tool, or a written report produced by an investment analysis tool, that meets the requirements of Rule 2214; [and]

(iii) A price target contained in a research report on debt or equity securities, provided that the price target has a reasonable basis, the report discloses the valuation methods used to determine the price target, and the price target is accompanied by disclosure

concerning the risks that may impede achievement of the price target; and

(iv) A communication that projects the performance or provides a targeted return with respect to a security or asset allocation or other investment strategy, provided that:

a. The communication is: (i) an institutional communication, or (ii) a communication that is distributed or made available only to persons meeting the definition of “qualified purchaser” under the Investment Company Act and that promotes or recommends either a Member Private Offering that is exempt from the requirements of Rule 5122 pursuant to Rule 5122(c)(1)(B), or a private placement that is exempt from the requirements of Rule 5123 pursuant to Rule 5123(b)(1)(B);

b. The member adopts and implements written policies and procedures reasonably designed to ensure that the communication is relevant to the likely financial situation and investment objectives of the investor receiving the communication and to ensure compliance with all applicable requirements and obligations;

c. The member has a reasonable basis for the criteria used and assumptions made in calculating the projected performance or targeted return, and retains

written records supporting the basis for such criteria and assumptions;

d. The communication prominently discloses that the projected performance or targeted return is hypothetical in nature and that there is no guarantee that the projected or targeted performance will be achieved; and

e. The member provides sufficient information to enable the investor to understand (i) the criteria used and assumptions made in calculating the projected performance or targeted return, including whether the projected performance or targeted return is net of anticipated fees and expenses; and (ii) the risks and limitations of using the projected performance or targeted return in making investment decisions, including reasons why the projected performance or targeted return might differ from actual performance.

(2) through (9) No Change.

(e) through (g) No Change.

**••• Supplementary Material:-----**

**.01 Reasonable Basis for Criteria Used and Assumptions Made in Calculating Projected Performance or a Targeted Return**

(a) In forming a reasonable basis for the criteria used and assumptions made in calculating projected performance or a targeted return pursuant to Rule 2210(d)(1)(F)(iv),

members should consider multiple factors, with no one factor being determinative.

Depending on the particular projected performance or targeted return, such factors may

include, but are not limited to, the following:

(1) Global, regional, and country macroeconomic conditions;

(2) Documented fact-based assumptions concerning the future performance of capital markets;

(3) In the case of a single security issued by an operating company, the issuing company's operating and financial history;

(4) The industry's and sector's current market conditions and the state of the business cycle;

(5) If available, reliable multi-factor financial models based on macroeconomic, fundamental, quantitative, or statistical inputs, taking into account the assumptions and potential limitations of such models, including the source and time horizon of data inputs;

(6) The quality of the assets included in a securitization;

(7) The appropriateness of selected peer-group comparisons;

(8) The reliability of research sources;

(9) The historical performance and performance volatility of the same or similar asset classes;

(10) For managed accounts or funds, the past performance of other accounts or funds managed by the same investment adviser or sub-adviser, provided such accounts or funds had substantially similar investment objectives.

policies, and strategies as the account or fund for which the projected performance or targeted returns are shown;

(11) For fixed income investments and holdings, the average weighted duration and maturity;

(12) The impact of fees, costs, and taxes; and

(13) Expected contribution and withdrawal rates by investors.

(b) Members may not base projected performance or a targeted return upon (i) hypothetical, back-tested performance or (ii) the prior performance of a portfolio or model that was created solely for the purpose of establishing a track record.

\* \* \* \* \*